

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-42

February 6, 2001

PUBLIC UTILITIES COMMISSION
Rulemaking to Create the Electric
Lifeline Program (Chapter 314)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to create a statewide, needs-based assistance program for low-income electricity customers pursuant to 35-A M.R.S.A. §3214.

II. BACKGROUND

In 1991, the Maine Public Utilities Commission (Commission) approved bill payment assistance programs for low-income customers of each of Maine's three investor-owned electric utilities.¹ Each of the three programs had different design features and offered different benefit levels. In 1997, the Legislature enacted and the

¹ Central Maine Power Company's (CMP) low-income customer assistance program, upon which our proposed statewide program is largely based, is called the "Electric Lifeline Program." In addition to incorporating several features of CMP's current program into our proposed statewide program, we have also adopted the name "Electric Lifeline Program" for the proposed statewide program. To avoid confusion, all references to the "ELP" in this Order are to the statewide program and not to CMP's current low-income program.

CMP's current low-income program was designed as a variation on the "percentage of income" program theme in which the participant's bill payment requirement to the utility is calculated based on the relationship between the customer's total household income and the customer's annual electricity bill from CMP. Benefits are paid to a customer only when the annual household electric usage exceeds a predetermined percentage of total household income.

Bangor Hydro-Electric Company's (BHE) "Low-Income Discount Rate Program" is a tariffed rate discount that varies by the customer's household income. Maine Public Service Company's (MPS) "PowerPACT Program" enrolls LIHEAP-eligible customers who either have electric heat or an electric water heater (thus eliminating low-usage customers) and requires the customer to make payments according to a negotiated payment plan which is often less than the customer's full winter electric bill. If the customer complies with the negotiated payment plan, the customer receives a credit on her or his bill in May/June.

More information about these three current low-income customer assistance programs can be found in the report entitled "Background and Needs Analysis: Maine's Low-Income Bill Payment Assistance Programs" which is discussed in more detail later in this Order.

Governor signed a law that restructured Maine's electric industry.² Included in that law is a provision codified at Title 35-A § 3214 that directs the Commission to oversee the implementation of a statewide assistance program for low-income electricity customers.

In February 1999, CMP and several other members of an informal stakeholder group convened by CMP, supported the introduction of L.D. 1500, An Act to Establish a Trust Fund to Provide Statewide Assistance to Low-Income Electric Consumers. L.D. 1500 would have established a non-lapsing trust fund to finance a statewide low-income assistance program. The proposed program would have been based on the current CMP Electric Lifeline Program model in both eligibility criteria and benefit levels. The proposed program would have been administered by the Maine State Housing Authority (MSHA) and regional Community Action Agencies in conjunction with the federally funded Low-Income Home Energy Assistance Program (LIHEAP). L.D. 1500 was never enacted, but it did demonstrate substantial agreement among several key stakeholders on some of the basic design components of a statewide electric low-income program.

On June 29, 1999, after the demise of L.D. 1500, Commission staff met with stakeholders to discuss procedural issues and a schedule for the establishment and implementation of a statewide low-income program. The group agreed that the Commission should commence a rulemaking proceeding in 2000 to establish the design, administration, and funding criteria for a statewide program would be implemented in the fall of 2001. The group further agreed that much data needed to be gathered and analyzed prior to drafting a proposed rule and that the stakeholder group would be reconvened prior to commencement of the formal rulemaking process.

The Commission hired a consultant, Barbara Alexander, to compile and analyze relevant data and report her findings and recommendations to the Commission. Ms. Alexander's report, which is entitled "Background and Needs Analysis: Maine's Low-Income Bill Payment Assistance Programs" (Needs Analysis), was submitted to the Commission and distributed to all persons on the Commission's stakeholders list. On September 27, 2000, Commission staff met with stakeholders to share the results of the staff's data gathering/analysis and to discuss specific program design features. During the September 27th meeting, staff sought input from stakeholders and invited follow-up written comments. CMP, BHE, and MPS submitted written comments.

The attached proposed rule is based on our experience with the three different low-income programs currently in effect, the Needs Analysis, additional data and analysis developed by staff, and the input we have received from stakeholders through the informal process described above. As a general matter, we seek comment on any aspect of the proposed rule. We have identified specific aspects of the proposed rule where comment would be especially helpful.

III. DISCUSSION OF THE PROPOSED RULE

² An Act to Restructure the State's Electric Industry, P.L. 1997, ch. 316 (codified at 35-A M.R.S.A. sections 3201-3217).

A. Scope of Rule (section 1(A))

In addition to Maine's three investor-owned electric utilities, Maine has 10 consumer-owned electric utilities.³ Three of these consumer-owned electric utilities' systems are not physically connected to any other transmission and distribution utility.⁴ Section 3202(6) exempts these three "island" utilities from restructuring. The proposed rule would similarly exempt them from participation in the ELP. We seek comment on whether such an exemption is compatible with a "statewide" program. Should low-income customers of these island utilities be allowed to qualify for program benefits even though the utilities' customers are not contributing to the program fund?

B. Definitions (section 1(B))

Many of the definitions in the proposed rule reflect definitions that already exist in Chapter 81 of the Commission's rules. We adopt the name "Electric Lifeline Program (ELP)" for our proposed statewide program (section 1(B)(5)). We also distinguish between an "eligible customer" (section 1(B)(6)) who is qualified to participate in the program and a "participating customer" (section 1(B)(9)) who is both qualified and actually participating in the program.

C. Purposes of Program (section 2)

The proposed rule identifies three purposes for the ELP: (1) to bring participants' electric bills into the range of affordability; (2) to encourage participants to keep their payment arrangements current; and (3) to encourage participants to reduce usage and participate in no-cost conservation and energy management measures.

D. Design Features of the ELP (section 3)

1. Maintain Existing Levels of Assistance (section 3(A))

Section 3214(1) states that "it is the policy of the State to ensure adequate provision of financial assistance" to "electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance... ." Section 3214(2) directs that the low-income program "continue existing levels of financial assistance for low-income households and meet future increases in need caused by economic exigencies...." The language in the proposed rule mirrors this statutory directive.

³ These 10 consumer-owned electric utilities are Eastern Maine Electric Cooperative; Town of Madison, Department of Electric Works; Kennebunk Light and Power District; Van Buren Light and Power District; Houlton Water Company (Electric Division); Monhegan Plantation Power District; Matinicus Plantation Electrical Company; Swans Island Electric Cooperative; Fox Islands Electric Cooperative and Isle Au Haut Power Company.

⁴ These three systems are Matinicus Plantation Electrical Company, Monhegan Plantation Power District and Isle Au Haut Power Company.

2. Statewide Availability (section 3(B))

Section 3214(1) articulates a policy which recognizes that “electricity is a basic necessity to which all residents of the State should have access...” We interpret this policy statement, coupled with the other provisions of section 3214, to require a low-income program that provides comparable benefits for electric customers throughout the State.

3. Program Implementation and Administration (section 3(C))

The proposed rule contemplates that the ELP will be administered and implemented by the MSHA, in cooperation with the Community Action Agencies and any other entity chosen by the MSHA. A single administrative entity for the statewide program, using a common set of rules and administrative procedures, will be more efficient than alternative administrative structures. We further believe the MSHA is well situated to perform the activities set forth in the proposed rule because of its experience with the implementation of LIHEAP and the U.S. Department of Energy’s weatherization program. In addition, the MSHA has existing contractual relationships with Community Action Agencies across the State for the implementation of the LIHEAP and weatherization programs and has expressed a willingness to perform the role. Furthermore, the MSHA’s administrative role in the program appears to be supported by all of the participants in Commission-sponsored stakeholder meetings convened to discuss this topic. However, the MSHA requires specific statutory authority to perform the proposed administrative role. We understand that the MSHA seek the necessary legislation in the 2001 session and anticipate that the required statutory authority will be in effect prior to the promulgation of this rule.

4. Program Funding (section 3(D))

Title 35-A M.R.S.A., § 3214(2)(A) provides that the program will be paid for by “funds collected by all transmission and distribution utilities in the State....” Section 3(D) of the proposed rule reflects this directive.

5. Percentage of Income (section 3(E))

In determining program design, we considered a variety of models including the design features of the three programs currently in place in Maine. One of the fundamental choices we had to make was whether to follow a “percentage of income” model like that employed in CMP’s current program or to design our statewide program around a tariffed rate discount model similar to BHE’s current program.

Under the targeted discount rate approach employed in the current BHE program, the discount received by a participant varies with the participant’s household income. Participants with the lowest income levels receive the greatest discount. BHE and MPS representatives have expressed a preference for the discount rate model over the percentage of income model on the grounds that the discount rate

model would be less costly to implement, less costly to administer and less confusing to their customers. BHE and MPS have also argued that more customers would receive benefits under a statewide program that is based on a discount rate model rather than a percentage of income model.

Under the percentage of income model employed in the current CMP program, a participant's bill payment requirement to the utility is based on the relationship between the participant's total household income and the participant's annual electricity bill. Benefits are paid to a participant only when the participant's annual household electric usage exceeds a predetermined percentage of total household income. A key component in the percentage of income model is the incorporation of a budget payment plan. The percentage of income model formed the basis of the program proposed in LD 1500. With the exception of BHE and MPS, all participants in the Commission's informal stakeholder meetings favored the use of a percentage of income model for a statewide program in Maine.

There are advantages and disadvantages associated with both the discount rate model and the percentage of income model. Under the percentage of income model, the customer's income is the major variable: the customer's income level determines the amount of the customer's co-payment. This ensures that customers retain sufficient funds after paying their electricity bills to pay for other needs. The percentage of income model also targets funds to customers with the greatest need, which results in fewer customers receiving larger benefits.

With the discount rate model, the major variable is the customer's usage: the amount of usage determines what customers will pay. Except as a threshold eligibility criteria, income level (and ability to pay) is not considered. The discounted rate approach typically results in a large number of customers receiving a relatively small benefit amount. The discounted rate model incorporates a tapered discount so that lower usage customers in the second and third rate discount tiers receive either a smaller discount or no discount at all. This results in small or no discounts for customers whose household income exceeds 100% of poverty guidelines unless the household uses over 500 kwh per month. The discount rate model and the percentage of income model each contain many aspects similar to the other; the major difference is the targeting of funds under the percentage of income model to customers with the greatest need.

We prefer the percentage of income model for several reasons. First, under the percentage of income model, eligible customers will receive a benefit that is directly related to the customer's annual electricity bill as a function of their household income. Second, the percentage of income model better targets limited benefit dollars to those customers who need it most. We acknowledge that the statewide application of the percentage of income model will produce fewer eligible customers and larger average benefits than would the statewide application of a tariffed discount rate. However, such a distribution of limited program dollars is the best way to provide the assistance required by section 3214. Finally, while a statewide program

employing a targeted rate discount design would be somewhat simpler and less costly to administer, the superior results of the deployment of a percentage of income model more than justify the associated administrative costs. We invite further comment on our decision to base the statewide program on the percentage of income model.

Two key features of the proposed program design are: (1) its focus on an individualized ability to pay (based on a percentage of income devoted to electric service); and (2) the calculation of a customer's payment obligation in the form of a fixed monthly amount (total estimated bill minus the customer's benefit amount). This approach requires a determination of the applicable percentage of income used to calculate the customer's co-payment. The proposed rule incorporates a two-tiered mechanism that sets payment levels based on income. Under this mechanism, participants with incomes at or below 75% of federal poverty guidelines will pay 6% of their income and those with incomes above 75% of federal poverty guidelines pay 11% of their income.

The percentage of income used to calculate the customer's co-payment directly affects the overall cost of the ELP. We have considered a variety of percentage of income combinations and assessed their corresponding benefit levels and costs. Based on the Needs Analysis and our additional analysis to date, the percentage of income structure in the proposed rule will provide financial assistance levels consistent with section 3214, and will do so within an affordable framework. We also realize that this approach has a significant impact on customers who slightly exceed the 75% threshold. Other approaches, however, mandate the use of more complex formulas for calculating benefits and conflict with our goal of minimizing administrative costs for the program. Nevertheless, the approach we've proposed may significantly impact some customers and therefore we seek comments on this method.

6. Estimated Cost of Electric Service (section 3(F))

The proposed rule provides that a customer's estimated cost of electric service will be calculated using an estimated annual residential usage that is based on that customer's prior year's usage for that dwelling unit. In situations where the customer's usage information for the 12 previous months is not available, the proposed rule requires transmission and distribution utilities to provide the CAP agencies with the information necessary for the CAPs to estimate the customer's usage. This is a change from the method used under CMP's current ELP where the cost of service is based on the prior year's usage for that dwelling unit, regardless of whether the customer resided in the unit. This method of estimating usage may result in the transmission and distribution companies' issuing make-up bills to households whose usage exceeds that of the previous tenant. The make-up bills may result in these customers' defaulting on their payment arrangements through no fault of their own. The transmission and distribution utilities have tables that show typical usage for electrically powered appliances that can be used to estimate usage at households where the customer has not resided for 12 months. We seek comment on this provision. Specifically, do commenters believe that usage estimates based on the dwelling unit's

usage over the past 12 months are more accurate than the method proposed in this rule? If so, why?

In addition, the proposed rule provides that in situations where there is residential and non-residential use on the same meter, the transmission and distribution utility will determine the amount of residential use by conducting a usage analysis. This will ensure that ELP benefits are limited to residential electricity use and are not used to subsidize a commercial operation. We do not, however, intend for residential consumers who may at times use small amounts of electricity for non-residential purposes to have electricity usage excluded from the program that would otherwise be included, e.g. a small day care facility operated from an ELP eligible customer's home. We also believe few ELP customers have both residential and non-residential electricity use passing through the same meter. The proposed rule therefore requires utilities to receive authorization from the CAD prior to excluding electricity usage from a customer's estimated electricity cost. We seek comment on this provision. Specifically, is the process for separating commercial use from residential use proposed in this rule excessively costly or administratively burdensome for the transmission and distribution utilities? If so, are there other options that would be less costly and/or administratively burdensome?

7. Co-Payment (section 3(G))

Under the proposed rule, a customer's annual co-payment will be determined by multiplying the customer's annual household income by the percentage of income that is applicable to the customer. The proposed rule further provides that the annual co-payment amount must not be less than twelve times any minimum monthly bill required by the applicable tariffed rate.

8. Calculation of Monthly Credit (section 3(H))

Under the proposed rule, a participant's monthly credit will be calculated by subtracting the participant's co-payment from the participant's estimated cost of electric service⁵ and dividing the remaining amount by 12. The proposed rule further requires that any LIHEAP benefit applicable to the participant's electric service will be subtracted from the otherwise applicable annual fixed credit total.

9. Minimum Credit Amount (section 3(I))

CMP's current Electric Lifeline Program has a minimum benefit amount of \$50. This has eliminated many otherwise eligible customers from the program. According to some Community Action Agency representatives, the \$50 minimum has had a particularly adverse effect on many low-income elderly clients whose annual benefit (due to their low usage and low income) is less than \$50.

⁵"Cost of electric service" includes both transmission and distribution charges, as well as generation charges.

The purpose of the minimum credit amount is to eliminate the administrative costs of calculating an annual budget payment plan that reflects a relatively small monthly credit on the participant's bill. In an effort to balance the desire to provide assistance to those who need it most with the need to keep administrative costs as low as is reasonably possible, the proposed rule incorporates a minimum annual credit amount of \$36.

10. Maximum Credit Amount (section 3(J))

CMP's current Electric Lifeline Program does not establish a maximum customer benefit. Data show that a small group of participants in CMP's current program receive annual benefits exceeding \$2,000. This is true even though the program formula requires high-use customers to pay 11% or 12.1% of their household income for electric service. In designing a statewide program, we must create a benefit structure that is both equitable and affordable. We have concluded that creating a cap on annual benefits is the best way to satisfy the many competing concerns inherent in the construction of a statewide program. Most stakeholders have expressed support for the incorporation of a maximum benefit amount into the statewide program design. The proposed rule establishes a maximum benefit amount of \$600 (\$50 per month). We seek comment on whether the program should include a benefit cap and, if so, at what level the cap should be set.

11. Determination of ELP Benefit (section 3(K))

This section of the proposed rule describes how sections 3(F) through 3(J) fit together. If a participant's estimated cost of electric service (section 3(F)) exceeds the participant's co-payment amount (section 3(G)), the remainder will be divided by 12 and be applied to the participant's bill in the form of a fixed credit (section 3(H)). The fixed credit must be greater than the minimum credit amount (section 3(I)) and may not exceed the maximum credit amount (section 3(J)).

This section also requires a participant's LIHEAP benefit for electric service be subtracted from the total amount of the otherwise applicable credit amount. This is to prevent "double dipping," the provision of assistance from two different sources for the same item. We seek comment on this. Does the existence of the \$600 cap in benefits alleviate the problem of "double dipping?" Should a LIHEAP benefit for electric use be added to the benefit amount? Is this requirement consistent with federal laws governing LIHEAP? The proposed rule does, however, provide that emergency or supplemental LIHEAP benefits not be subtracted from the fixed credit amount but will instead be applied to the participant's current account. This section clarifies that a participant is responsible for all actual charges for electric service in excess of the flat monthly credit and provides that participants with substantial arrears balances may be eligible for forgiveness of a portion of these arrears pursuant to section 3(N).

12. Payment Plan (section 3(L))

The proposed rule requires each transmission and distribution utility to establish a payment plan for each of its participating customers that requires the customer to pay the co-payment determined by the CAP agency in 12 equal monthly installments.

13. Adjustment to Monthly Credit (section 3(M))

Typically, a participant's monthly credit is fixed for the full program year. However, the proposed rule identifies six circumstances under which the transmission and distribution utility must adjust a participant's credit amount. These six circumstances include: 1) when the participant moves to a new location; 2) when electrically powered life support equipment is installed; 3) when adults who reside in the participant's household legally separate or change the responsible name on the account; 4) when a rate increase of least 5% for the total amount of the bill takes effect; 5) when the actual energy usage for an eligible household exceeds by 20% the usage amount estimated by the transmission and distribution utility at the time the eligible customer enrolled in the ELP; and 6) when both residential and non-residential electricity use is passing through the same meter. Each of these circumstances involves a change or potential change in a customer's electrical usage or cost of electricity. When a customer's usage or the cost of electricity changes, it may be necessary to review and potentially adjust the customer's monthly credit to prevent a large bill at the end of the program year.

The proposed rule requires transmission and distribution utilities to review at least semi-annually each ELP customer's account to determine if the actual usage for that customer's household varied from the threshold established by this section. The purpose for this review and adjustment to the monthly credit is to ensure that customers whose usage exceeds the estimated usage do not receive make-up bills that are unaffordable. Excessively high make-up bills may result in these customers defaulting on their payment arrangements through no fault of their own. We seek comment on this provision. Should customers' usage be reviewed more often than semi-annually? Is a 20% increase an appropriate benchmark to trigger an adjustment to the monthly credit? Will the semi-annual review be unduly burdensome or costly for the transmission and distribution utilities? If so, what alternatives are there to ensure that customers do not receive large make-up bills at the end of the program year? Will seasonal variations in electric usage affect a utility's ability to appropriately adjust a customer's benefit under this section? If so, are there measures that can be taken to alleviate or reduce this impact? Should the seasonal variation information be made available to customers?

14. Pre-Program Arrears and Arrears Forgiveness (section 3(N))

None of the three utility programs currently in place in Maine addresses a participant's arrears balance that exists at the time the customer enters the program. Participants in CMP's Electric Lifeline Program must roll their arrears balance into the 12-month payment plan required under the program. The MPS PowerPACT

Program also includes arrears balances in the required payment arrangements, but spreads the balances over an even shorter period (until May-June). BHE's Low-Income Rate Discount Program does not require a payment arrangement as a condition of enrollment, but follows the Company's traditional policy of requiring a payment arrangement as a condition of service when a customer develops an arrears balance.

If a customer enters the program with a high arrears balance, the risk of non-payment and resulting collection activity is increased. The impact of a large arrears balance can totally wipe out the "affordability" of a participant's required co-payment under a percentage of income program design, sometimes doubling the required payment amount so that the participant is paying more than 20% of his or her income to maintain electric service. Payments of such magnitude are incompatible with the 35-A § 3214(1) requirement of "adequate" financial assistance to "all residents of the State."

Under the proposed rule, an eligible customer's pre-program arrears will be deferred during the term of the payment plan. This is a change from CMP's program which provided for pre-program arrears to be included in the calculation of the customer's payment plan up to a point where the customer's expected monthly payments are doubled what the amount would have been without the inclusion of the pre-program arrears. The inclusion of pre-program arrears in the customer's payment plan defeats the purpose of the PIP program, i.e., to establish a customer's co-payment that is affordable based on that customer's income level. We seek comment on this aspect of the proposed rule.

The proposed rule also requires each transmission and distribution utility to offer a participating customer with deferrable pre-program arrears the option to obtain a forgiveness of some or all of the participant's deferred arrears balance. Under the proposed rule, the utility will forgive \$2 for every \$1 of deferrable pre-program arrears paid by the participant during the term of the payment plan.

We recognize that the arrears forgiveness component of the proposed rule is controversial. We also recognize that an arrears forgiveness program can create an incentive for customers to "game the system" by purposely allowing arrears to accumulate so that the arrears balance can be later paid at a lower rate. We also acknowledge that the cost of an arrears forgiveness component is difficult to quantify. The problems, however, presented to eligible customers by large pre-program arrears are significant and need to be addressed. We seek input on the desirability and design of an arrears forgiveness component to the ELP. Specifically:

- Are there other ways to address the problems created by an eligible customer's large pre-program arrears?
- How can the costs of an arrears forgiveness component be quantified?

- Will the costs of the program exceed the revenues generated by the program?
- If there are costs associated with an arrears forgiveness program, how should utilities recover this cost?
- Would a one-to-one ratio of money paid to debt forgiven better balance the cost of the program versus the revenue generated from the program?
- Should the cost of an arrears forgiveness program be capped and, if so, at what level?
- Is a pilot program to assess the viability of an arrears forgiveness program desirable?
- Are there measures that can be taken to minimize the ability of customers to "game" the system?

Please provide a thorough explanation, as well as data, to support any conclusions or recommendations.

15. Portability of Benefits (section 3(O))

Under retail electric competition, utilities now provide unbundled bills to all customers. These unbundled bills show the regulated transmission and distribution charges, as well as the charges for either the Standard Offer or the price charged for generation by the customer's alternative electricity provider.⁶ The proposed rule reflects the existence of retail competition and allows participants to "carry" their benefits to any competitive electric service supplier chosen by the participant. When a customer selects a competitive electricity provider, the ELP benefit will be applied to the transmission and distribution company's charges. In situations where the benefit amount exceeds the total cost for transmission and distribution services, including any minimum charge, the benefit will equal the total billed amount for transmission and distribution services. These instances should be few due to the \$600.00 benefit cap (see examples in attachment B).

We realize that applying the benefit to a minimum charge seems to conflict with section 3(G) of this rule, however, without this provision, customers who choose a competitive electricity provider may pay higher overall electricity costs than customers who remain on the standard offer. In situations where the ELP benefit exceeds the total cost for transmission and distribution services, the customer will lose the amount of the benefit that exceeds the total amount billed for transmission and

⁶The smaller electric utilities are not required to unbundle their electric bills.

distribution services and therefore must decide if the savings associated with the competitive provider exceed the benefits lost (see Table II for an example). To minimize this loss, as well as to encourage people to take advantage of a competitive electricity market, we propose that ELP benefits be applied to all transmission and distribution charges (including minimum charges) in situations where a customer has chosen a competitive electricity supplier and the amount of the ELP benefit exceeds the total amount billed for transmission and distribution services.

16. Relationship to Energy Management Services (section 3(P))

The proposed rule requires participants to accept no-cost energy management programs offered by or through the applicable transmission and distribution utility pursuant to Chapter 380 of the Commission's rules or by the MSHA. The energy management programs available to participants under the ELP should be coordinated with the design and implementation of the state energy conservation program planning that is currently being coordinated by the State Planning Office.

17. Impact on Means-Tested Assistance Programs (section 3(Q))

Title 35-A § 3214(2)(B) provides that the ELP funding formula "may not result in assistance being counted as income or as a resource in other means-tested assistance programs for low-income households. To the extent possible, assistance must be provided in a manner most likely to prevent the loss of other federal assistance." The language in this section of the proposed rule tracks this statutory directive.

18. Continuing Applicability of Chapter 81 (section 3(R))

The proposed rule clarifies that the provisions of Chapter 81 of the Commission rules shall continue to apply unless otherwise specifically provided by the proposed rule.

19. No Right or Entitlement (section 3(S))

This section establishes that the proposed rule creates a pool of eligible applicants, but does not confer any right or entitlement on any person or eligible entity.

E. Program Funding (section 4)

1. Funding Amount for Program Year Beginning October 1, 2001 (section 4(A))

Title 35-A § 3214(2)(B) directs the Commission to "[s]et initial funding for programs based on an assessment of aggregate customer need... ." The

Needs Analysis specifically addresses the issue of “aggregate customer need.”⁷ The Needs Analysis discusses historical poverty levels in Maine and compares the income levels of Maine’s households to the income levels in other states. The Needs Analysis addresses health care coverage, social service programs, LIHEAP benefits and the REACH initiative in the Maine context. The Needs Analysis also discusses the cost of electricity in Maine and analyzes the energy burden on Maine’s low-income population.

Based on the Needs Analysis and our additional research and analysis, we conclude that the aggregate need of Maine’s low-income electricity customers is substantial and that the need which justified the creation of the three investor-owned utility programs in the early 1990s persists today. We further conclude that the current aggregate need justifies: (1) maintaining the approximate benefit levels offered by CMP’s Electric Lifeline Program; and (2) making those benefit levels available on a statewide basis. The ELP design features reflected in the proposed rule meet the current aggregate need.

The Needs Analysis also discusses program costs and rate impacts. Based on this analysis, it appears that the ELP design features contained in the proposed rule will require the delivery of approximately \$6,000,000 in benefits for the program year beginning October 1, 2001. We estimate that program implementation and administration costs will be approximately \$600,000. The proposed rule therefore establishes a total statewide cost for the ELP for the program year beginning October 1, 2001 of \$6,600,000. We seek comment on the accuracy of our estimate. Commenters should include statistical information to validate any alternate cost figures provided. We also seek comment on ways to address a major revenue shortfall during the first year of the program in the event that our estimate of the total program cost is significantly below the actual cost.

This is an increase of approximately \$1.1 million over the costs of the three existing low-income assistance programs. This increase represents the cost of implementing a PIP program on a statewide basis. Specifically, it represents the cost to extend a PIP based program to the BHE and MPS territories, as well as to establish a low income assistance program in the COU territories (where such a program does not currently exist).

In 1999, transmission and distribution revenues for all Maine electric utilities (except the three “island” utilities that are exempt from restructuring) were \$568,317,929. The total cost of the ELP for the program year beginning October 1, 2001 (\$6,600,000) represents 1.165% of total transmission and distribution revenues (\$568,317,929). Attachment A includes a table that shows transmission and distribution revenues, projected ELP obligation and percent of the ELP funded for each transmission and distribution utility.

⁷ As noted above, the Needs Analysis has already been distributed to the group of stakeholders who have been discussing the design and implementation of a statewide low-income assistance program for the past two years. The Needs Analysis is posted on the Commission’s web site at www.state.me.us/mpuc.

2. Funding Amount for Subsequent Program Years (section 4(B))

To ensure that the ELP remains consistent with the provisions of 35-A § 3214, the Commission will continue to monitor the needs of Maine's low-income electric customers. We will also monitor ELP funding and expenditure levels and evaluate program design features on an ongoing basis. This section of the proposed rule provides that, for the program year beginning on October 1, 2002 and for all subsequent program years, the Commission will make any necessary adjustments to the funding amount or other ELP design features by July 1. This will provide the CAP agencies with sufficient time to modify their informational documents and train their staff for the upcoming program year.

3. Transfer of Funds (section 4(C))

The mechanism for transferring funds from the transmission and distribution utilities to the MSHA was actively discussed by stakeholders during pre-rulemaking meetings and in follow-up written comments submitted by MPS, BHE and CMP. Several concerns have been voiced. The utility representatives contend that a funding mechanism that requires each utility to pay its full funding obligation at the beginning of each program year would unnecessarily impose carrying costs on the utilities and would be more expensive to administer. As an alternative, the utilities have proposed a monthly or quarterly true-up funding mechanism. MSHA representatives favor a mechanism that directs each transmission and distribution utility to convey its full funding obligation to the MSHA at the beginning of each program year. MSHA representatives contend that the utilities' proposed true-up funding mechanism might create cash flow problems and overall funding deficiencies. We share the MSHA's concern.

The proposed rule requires transmission and distribution utilities to transfer their entire funding obligation to the MSHA at the beginning of the program year. However, we recognize that the proposed mechanism may generate costs not inherent in alternative mechanisms. In developing the proposed rule, we have consistently tried to adopt design features that will keep administrative costs as low as reasonably possible. We seek further comments on this provision of the proposed rule and specifically invite commenters to develop a fund transfer mechanism that will impose fewer costs and still satisfy the concerns expressed by the MSHA.

4. Distribution of Funds (section 4(D))

The proposed rule provides that the MSHA will disburse funds to transmission and distribution utilities on a quarterly basis. Funds will be distributed to a utility based on its actual ELP expenditures. The proposed rule provides that the MSHA's distribution of monies to the utilities is subject to sufficient funding and expressly provides that no utility will have a cause of action against the MSHA as a result of lack of funding. The proposed rule does not establish a process or timeframes

for the transfer of funds from the MSHA to the utilities. The MSHA and the transmission and distribution utilities are in the best position to establish a process that works for them; therefore, the proposed rule allows for this. We seek comment on this provision.

F. Program Administration: Role of the MSHA (section 5)

This section of the proposed rule provides that the MSHA will administer and implement the ELP in conjunction with the MSHA's delivery of LIHEAP in Maine. As noted above, the MSHA will require additional statutory authority to perform the role contemplated in the proposed rule. The citation to the anticipated statutory authority will be inserted into this section of the proposed rule after such authority takes effect.

1. Fiscal Oversight (section 5(A))

Under this section of the proposed rule, the MSHA will track and monitor program costs, available funds and cumulative benefit expenditures.

2. Administrative Expenses Incurred by the MSHA (section 5(B))

The proposed rule provides that the MSHA will be entitled to a maximum of 10% of the total program-funding amount for costs that the MSHA and the Community Action Agencies incur in the implementation and administration of the ELP. This approach is modeled after the federal LIHEAP program which also has a program rule capping administrative expenses at 10% of total program costs. The proposed rule further provides that any interest earned on ELP funds provided by transmission and distribution utilities will be attributed to the fund.

3. Report to Commission (section 5(C))

Reports from the MSHA to the Commission will provide information that is essential to the Commission's program monitoring activities. The proposed rule provides that the MSHA will submit quarterly reports and annual reports to the Commission and identifies six categories of information to be included in the reports. The proposed rule also provides that MSHA will maintain records and identifies two categories of information that will be maintained. We seek input on whether the required information will provide a sufficient basis of information for the Commission's ongoing program monitoring activities.

4. Record Maintenance (section 5D)

This section requires the MSHA to maintain records that include the number of customers evaluated for each program year, as well as household income, electricity usage, and the dollar amount of the annualized ELP benefit for each customer. This information is useful for trend analysis to forecast future changes in program spending, as well as for statistical information.

5. Coordination with Community Action Agencies (section 5(E))

This section of the proposed rule authorizes the MSHA to contract with the State's Community Action Agencies to administer the ELP at the local level. The proposed rule gives the MSHA the option of contracting with other agencies to administer the program locally or to perform local administrative functions itself.

G. Obligations of Transmission and Distribution Utilities (section 6)

1. Transition from Current Programs (section 6(A))

As noted previously, CMP, BHE and MPS currently have low-income bill payment assistance programs in place. The proposed rule provides that these existing programs will remain in place for the program year ending September 30, 2001. Under the proposed rule, the statewide ELP will take effect on October 1, 2001. The proposed rule directs CMP, BHE and MPS to notify their program participants of the termination of their existing program and the initiation of the statewide ELP for the 2001 program year. The proposed rule provides that this notice must be issued during the June-August, 2001 time period and include a discussion of the roles the MSHA and the Community Action Agencies will play in the new statewide ELP.

2. Changes to Transmission and Distribution Utility Terms and Conditions (section 6(B))

The proposed rule directs each transmission and distribution utility to submit revised terms and conditions necessary to implement the new ELP within 30 days of the effective date of the final rule.

3. Development of Electronic Transfer of Information (section 6(C))

As noted previously, the Commission is interested in all ways to reduce administrative costs associated with the ELP. The Commission believes that one way to reduce such costs is to maximize the efficiency of the transfer of information among all parties associated with the administration and implementation of the ELP. We therefore recommend that the MSHA, the Community Action Agencies and the transmission and distribution utilities work together to identify cost-effective ways to transfer information electronically and to employ available protocols that will minimize administrative costs associated with the ELP.

4. Notice to Customers (section 6(D)(1))

For the assistance offered by the statewide program to reach its intended recipients, eligible customers must be generally aware of the ELP and how it works. The proposed rule directs transmission and distribution utilities to provide notice of the ELP to their customers in a variety of ways. The proposed rule directs each transmission and distribution utility to inform its residential customers of the ELP in a bill

insert issued annually beginning in the fall of 2001. This annual notice must include ELP eligibility criteria, how to apply for the ELP, how benefits will be calculated, the customer's payment obligation for the balance of the annual bill and the availability of arrears forgiveness under certain circumstances. The proposed rule enumerates additional written notice requirements and directs each transmission and distribution utility to provide oral notice of the ELP and the ELP application process to any residential customer who contacts the utility and expresses difficulty in paying her or his electric bill. We seek comment on this provision and specifically invite commenters to recommend alternate ways of notifying customers of the existence of the ELP program.

5. Providing Information to Community Action Agencies and the MSHA (section 6(D)(2))

The proposed rule directs each transmission and distribution utility to furnish specified customer information to the MSHA and the Community Action Agencies upon request. This information is necessary for the MSHA or a CAP agency to determine consumer eligibility for the ELP program, as well as the amount of any ELP benefit. The proposed rule further provides that the information shall be transmitted electronically unless the parties agree to some other method of data transmission.

6. Calculation of Payment Plan (section 6(D)(3))

Under the proposed rule, the Community Action Agencies, or other MSHA-designated entity, will calculate an eligible customer's ELP benefit amount and transmit the necessary benefit information to the customer's transmission and distribution utility. The transmission and distribution will then establish the customer's payment plan and explain to the customer the details of her or his participation in the ELP. We seek comment on this provision. Specifically, will Community Action Agency staff require training from the transmission and distribution utilities to perform these calculations? The potential need for training is increased by the requirement in section 3(F) of the proposed rule that requires the Community Action Agency to estimate customers' usage when the 12 previous months of usage information is not available. If training is required, who should be responsible for the cost?

The proposed rule does not prescribe a process for addressing errors made when calculating customer benefits. If an error is made in the calculation of a customer's benefit that results in the customer receiving a higher benefit than otherwise would have been received, who should be responsible for compensating the fund: the customer for whom the mistake was made, the transmission and distribution utility, or the ratepayers in general? Should the compensation be apportioned among these groups?

7. Arrears Forgiveness (section 6(D)(4))

Under this section of the proposed rule, each transmission and distribution utility is required to offer to all of its eligible customers the arrears

forgiveness provisions previously discussed in section 3(D)(14) of this Order and as set forth in section 3(N) of the proposed rule.

8. Collection Procedures for ELP Participants (section 6(E))

This section of the proposed rule specifies that a transmission and distribution utility shall require a participant to repair the ELP payment plan by becoming current on the required monthly payment as a prerequisite to receiving monthly benefits during the program year.

9. Energy Management Measures (section 6(F))

Consistent with section 3(P) of the proposed rule, this section directs each transmission and distribution utility to coordinate its funding and delivery of energy management and demand side programs with the implementation of the ELP.

10. Reporting (section 6(G))

This section of the proposed rule requires each transmission and distribution utility to provide quarterly and annual reports to the Commission and the MSHA and identifies six categories of information to be included in the reports. We seek input on whether this information will be sufficient for the Commission's and the MSHA's ongoing program monitoring activities.

H. Waiver (section 7)

The proposed rule contains a waiver provision that allows the Commission to waive certain requirements of the rule upon the request of any person subject to the rule or upon the Commission's own motion.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§8051-8058. A public hearing on this matter will be held on March 8 at 9:00 a.m. in the Public Utilities Commission hearing room. Written comments on the proposed rule may be filed until March 31, 2001. Written comments should refer to the docket number of this proceeding, Docket No. 2001-42, and be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if any special accommodations are needed to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

V. FISCAL AND ECONOMIC IMPACT

Title 5 M.R.S.A. §8057-A(1) requires the Commission to estimate the fiscal impact the proposed rule. A summary of our projected funding obligations for each transmission and distribution utility that is required by the proposed rule is set forth in Attachment A to this Order. The Commission invites all interested persons to comment on the fiscal impact, economic effects and all other implications of the proposed rule.

VI. SERVICE

The Administrative Director shall send copies of this Order and the attached proposed rule to:

1. All transmission and distribution utilities in the State;
2. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;
4. All persons on the low-income rule workgroup stakeholder list;
5. All licensed competitive electricity providers in the State;
6. The Secretary of State for publication in accordance with 5 M.R.S.A. §8053(5); and
7. The Executive Director of the Legislative Council; 115 state House Station, Augusta, Maine 04333-0115 (20 copies).

Accordingly, we

O R D E R

That the Administrative Director send copies of this Notice of Rulemaking and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule; and

Dated at Augusta, Maine, this 6th day of February, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: ☐ Yes ☐ No ☐ Absent Welch
 ☐ Yes ☐ No ☐ Absent Nugent
 ☐ Yes ☐ No ☐ Absent Diamond

NOTE: STAFF PERSON RESPONSIBLE FOR DOCUMENT, CHECK YES OR NO
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If yes, the secretary must prepare a redacted copy for web publication? Note: This means that the confidential material must be deleted from the file and replaced with a black background. Only this redacted file can be published to the web.

Attachment A

Table 1 projects individual utility funding requirements based on benefits of \$6 million and administrative and implementation costs of \$600,000. Each utility's "Projected ELP Obligation" amount is generated by multiplying the utility's revenue amount by .01165.

TABLE 1

ELP FUNDING	T&D Revenues	Projected ELP Obligation	ELP Funding as a % of Total ELP
CMP	\$424,412,000	\$4,944,400	74.713%
BHE	\$103,179,000	\$1,202,035	18.163%
MPS	\$29,143,000	\$339,516	5.130%
EMEC	\$6,195,051	\$72,172	1.091%
Houlton	\$1,748,911	\$20,375	0.308%
KLP	\$1,121,394	\$13,064	0.197%
MEW	\$983,585	\$11,459	0.173%
Fox Islands	\$762,780	\$8,886	0.134%
Swans Island	\$277,626	\$3,234	0.049%
Van Buren	\$234,582	\$2,733	0.041%
Island Electrics (3)	\$260,000	Not Applicable	Not Applicable
TOTAL		\$6,617,875	100.00%
	\$568,317,929		

Attachment B

The following are examples of various ELP benefit calculations under the proposed rule. The purpose of the examples is to demonstrate how the benefit is calculated, as well as to demonstrate that under most circumstances, customers' ELP benefits will not exceed the total transmission and distribution charges because of the \$600 benefit cap. However, as shown in Example 3, benefits may exceed T&D charges for customers with extremely low incomes.

Example 1 is a customer whose annual income of \$8,000 is below 75% of the federal poverty guidelines and has an annual usage of 6,000 kwh. Example 2 is a customer whose annual income of \$8,000 is below 75% of the federal poverty guidelines and has an annual usage of 12,000 kwh. Example 3 is a customer whose annual income of \$3,000 is below 75% of the federal poverty guidelines and has an annual usage of 6,000 kwh. In all these examples, the total cost of electricity is \$0.12 kwh, with \$0.07 representing transmission and distribution charges and \$0.05 representing energy charges.

Example 1

Consumption	Total Charges	T&D Charges	Energy Charges	Co-Pay	ELP Benefit
6,000 kwh	\$720	\$420	\$300	\$480	\$240

Co-pay = \$8,000 (annual income) x 6% = \$480

ELP Benefit = \$720 (total charges) - \$480 (co-pay) = \$240

Example 2

Consumption	Total Charges	T&D Charges	Energy Charges	Co-Pay	ELP Benefit
12,000 kwh	\$1,440	\$840	\$600	\$480	\$960 (\$600 w/cap*)

* Benefit would have exceeded T&D Charges without cap.

Example 3

Consumption	Total Charges	T&D Charges	Energy Charges	Co-Pay	ELP Benefit
6,000 kwh	\$720	\$420	\$300	\$180	\$540*

Co-pay = \$3,000 (annual income) x 6% = \$180

* Benefit exceeds T&D charges by \$120.00. This customer would receive the entire benefit only if they were on the standard offer.